

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: McDonough

Serial No.: 09/539,132

Filed: March 30, 2000

For: Mechanism and Business Method
for Implementing a Service Contract
Futures Exchange



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Group Art Unit: Unknown

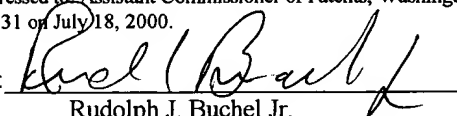
Examiner: Unknown

Attorney Docket No.: CMCDO.00001

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By:


Rudolph J. Buchel Jr.

PETITION TO MAKE SPECIAL UNDER RULE 37 CFR §1.102

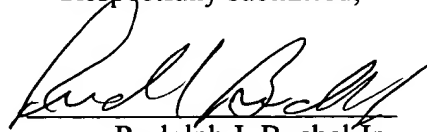
To: Assistant Commissioner for Patents
Box Petition
Washington, D.C. 20231

Sir:

This is a request under the provisions of 37 CFR 1.102(d) to Make Special the above-identified patent application including a petition fee of \$130.00 as set forth in 37 CFR § 1.17(i).

DATE: July 18, 2000

Respectfully submitted,



Rudolph J. Buchel Jr.

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Attorney for Applicant

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Timothy Francis
McDonough

GROUP ART UNIT: Unknown

SERIAL NO.: 09/532.132

EXAMINER: Unknown

FILED: March 30, 2000

INVENTION: MECHANISM AND
BUSINESS METHOD FOR
IMPLEMENTING A
SERVICE CONTRACT
FUTURES EXCHANGE

ATTY FILE: CMCDO.00001



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By:

Rudolph J. Buchel Jr.

STATEMENT AS REQUIRED BY MPEP 708.02

To: Assistant Commissioner for Patents
Box Petition
Washington, D.C. 20231

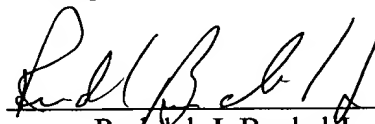
Sir:

1. On March 30, 2000, U.S. Patent Application No. 09/539,132 entitled **“MECHANISM AND BUSINESS METHOD FOR IMPLEMENTING A SERVICE CONTRACT FUTURES EXCHANGE,”** was filed by Timothy Francis McDonough.
2. It was discovered that an infringing method in use (see attached appendices 1 - 4).
3. A rigid comparison of the alleged infringing method with the claims of the above-identified application has been made, and at least some of the claims are infringed.
4. The above identified applicant has a good knowledge of the pertinent prior art.
5. A search of the prior art was made.

6. The pertinent prior art from the respective search and the applicant's knowledge has been filed with the U.S. Patent and Trademark Office at the time the above-identified application was filed.

DATE: July 18, 2000

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Rudolph J. Buchel Jr.', written over a horizontal line.

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Attorney for Applicant

<http://www.twcrossroads.com/news/newssearchwrapper.asp?ArticleID=21461>

News - Travel Technology

FairAir to launch air tix exchange

(6/9/00)

By Bill Poling

WASHINGTON -- A new travel company in San Francisco claims to have commitments from several airlines that will allow it to issue transferable airline tickets and to create a secondary market or trading exchange where passengers and speculators can buy and sell each other's tickets, with the airlines' blessing.

The new service, to launch this fall at www.fairair.com, hinges on the willing participation of what FairAir calls "our partner airlines," which will be rewarded with a portion of the fee revenue every time a ticket changes hands in the secondary market.

FairAir chief executive officer Frank Levy told Travel Weekly his company has written agreements or verbal commitments from the "senior vice president level" at several airlines, representing about 15% of the U.S. market. (That leaves out the Big Three, each of which has market shares above 15%. Northwest weighs in at about 11%, and Continental commands about a 9% share.)

As explained by Levy and his senior marketing director, David Glickman, the system would work like this: FairAir users would log on and buy airline e-tickets on the partner airlines, receiving the same rights and benefits, including frequent flyer miles, as any other airline passenger, with one exception: The tickets are transferable because the partner airlines agree to allow FairAir to change the name on the PNR after the sale.

Speculators

Some buyers may be traders or speculators rather than passengers. No matter. Any holder of a FairAir ticket can come back to the site and offer to sell the ticket to a third party in an open-market exchange that FairAir will manage.

The exchange will function like a stock market, with "bid/ask" price quotes. If a seller succeeds in finding a buyer, FairAir will handle the transaction, update the reservations record and collect a fee from the seller.

The airline gets a portion of the fee, and it also collects market data from the FairAir marketplace about the going rate for air transportation. Glickman said there will be no limit on the number of times a seat can be resold and no limit on the price for "second-hand" tickets, because that price will be "set by the market mechanism."

FairAir believes that both of these features will work to the airlines' advantage because the

"churning" of the inventory will produce incremental revenue in the form of transaction fees, and the effect of the market mechanism may well put an upward pressure on fares.

Recurring fantasy

Since deregulation in 1978, it has been a recurring fantasy among economists that airline tickets might one day be as transferable as theater tickets.

The idea never caught on among airlines, who have nothing to gain by allowing scalpers to mark up their product in a secondary market. Also, for security and other reasons, airlines want to know who their passengers are.

FairAir claims it addresses both of those concerns by managing the marketplace and the information, while bringing the airlines back into the revenue stream of the secondary market. The key, Glickman said, was "convincing some airline partners to allow people to change the name on the ticket."




Initially, users only will be able to sell and transfer tickets that were originally purchased through FairAir, but that could change as time goes on.

Also, as FairAir evolves, it could take on some business-to-business functions. Levy said FairAir's secondary market could serve as a distribution point for travel agents, tour operators and other travel industry entities requiring transferable or aftermarket tickets for their clients.

That scenario, however, invites questions about exclusivity. If the service works half as well as Levy and Glickman hope, then other companies, including some of the travel industry's heavy hitters, may want what FairAir has -- airline permission to transfer tickets. If ticket transferability becomes widespread, the entire distribution model will be turned on its head once again.



Folklore

FairAir is a new company but it already has some folklore, embodied in a framed 1995 letter to Levy (who was then in a Harvard MBA program), from American Airline's then-chairman Robert Crandall, politely declining to cooperate in developing the FairAir concept. Since 1996, Levy has been involved in a number of Internet start-ups, including PlanetAll.com, which was acquired by Amazon.com for \$100 million two years ago. Levy also worked on some airline projects at LEK Consulting before he and LEK's founder, Jim Lawrence, started FairAir.com last year.

COMING AND GOING

Contributors: John Briley, Carol Sottili.
Sunday, June 18, 2000; Page E01

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UPRIGHT AND LOCKED

Used Tickets, Cheap!

Ever weary of travel-related cyberspawl, CoGo nonetheless raised a heavy eyebrow at an Internet start-up's plans to offer industry-sanctioned, totally legit secondary market for the buying, selling and transferring of already-paid-for airline tickets.

FairAir.com, of San Francisco, says "several airlines" making up more than 15 percent of the U.S. market have agreed to participate, though officials won't name names or let on if any is a major. The site is expected to be operable this fall.

Only those who buy airline tickets from participating carriers, at the published rates available from any travel agency, will be permitted to re-sell or trade them on the site. To create the secondary market, users will post price-specific requests to buy and sell seats--similar to the bid/ask pricing of stocks--and be e-mailed when a transaction is completed. (This differs from Priceline.com, where users bid for seats that haven't yet been sold to anyone else.) The business proposition is to create a site where people will buy their airline tickets online, knowing those tickets would be more valuable and flexible if plans should change or they find their tickets suddenly more valuable than they expected. Sellers will pay a fee for each transaction. Countering some analysts' contention that the concept will never fly with majors--who have a long history of fighting ticket holders' rights to re-sell--FairAir senior director of marketing David Glickman explains the incentive: Carriers get a slice of the fee charged to sellers, plus valuable market data showing just how much money desperate passengers will pay for a given route.

Analyst Henry Harteveldt of Forrester Research says it's a "great idea" whose success hinges on at least one major finding reasons to sign on, which would likely draw the usual crowd of us-too majors to the table. If the site's secondary market doesn't have an inventory of majors' routes for sale at most times, Harteveldt says, it won't draw the critical mass of visitors needed to create a viable mart.

Search

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Adva

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The new firm does have several hitters on its payroll with significant experience with those very majors--Delta, TWA, Northwest and Continental--suggesting the firm at the very least is not merely a bunch of well-financed tweaks lunging after a mirage.

The site pledges to manage the entire transaction process, including the tricky task of ensuring that passenger names attached to the ticket change with each transaction. We're sure readers join CoGo in hoping for high quality control in that department.

LUGGAGE TAG

Money Bags

Northwest's new offer to throw unsolicited discount vouchers at fliers whose luggage is delayed may foretell more than it delivers. The program promises vouchers good for \$25 to \$100 off future travel, sans restrictions or blackout dates, tucked into apology letters delivered with the late bags. Late bags are defined as those that do not arrive with the passenger's plane.

Not a bad deal, in these trying times of awful service getting worse, and airlines making daily mincemeat of their haughty Customer First pledges.

"This reflects a change of attitude among [Northwest senior management] that there is a customer service problem," says Terry Trippler, airline analyst for 1Travel.com. "Will it reach the ramp? We can only hope."

Northwest hasn't fully abandoned airline mores: The value of your voucher will depend on how much you paid for your ticket (fares from \$75 to \$199 round trip will trigger a \$25 voucher; vouchers rise \$25 for every \$100 boost in fare).

The program started June 15 and will run indefinitely (initial certificates will expire Sept. 30, 2001; that date will be extended over time).

Bargain of the week

Three's a Charm

Take three round-trip trips on American Trans Air, and get the fourth one free. Complete the three trips by Aug. 31, and take your free trip Sept. 5-Feb. 14. ATA serves 14 cities from Reagan National. Get details and register at www.ata.com or at the ATA airport ticket counter.

Help feed CoGo. Send travel news, road reports and juicy tattles to: cogo@washpost.com. By fax: 202-334-1069. By mail: CoGo, Washington Post Travel Section, 1150 15th St. NW, Washington, D.C.

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2

Hdqt Location:

San Francisco, CA

Industry:

Airline

Sector:

of Employees:

Revenue:

\$

Stock Exchange:**Stock Name:**> **Company Profile****FairAir.com**

In partnership with airlines, we are creating the world's first person-to-person airline ticket exchange.

Benefits to Passengers:

- Ticket transferability.
- The chance to make a profit.
- The ability to get cash instead of credit when plans change.
- No more sold-out flights.

Benefits to Airlines:

- Higher revenues per plane as seats become inherently more valuable to consumers.
- Fees collected each time tickets are sold or transferred.
- The opportunity to speculate in the secondary market for their own tickets.
- Diversification into a structurally more attractive business.

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In partnership with airlines, FairAir.com is building the world's first exchange for transferable airline tickets. Available exclusively at *FairAir.com*, these e-tickets will change the rules of airline travel. Soon there will be two types of airline tickets. The transferable ticket. And everything else.

Please enter your e-mail address and we will notify you when we are live. Your email address will not be distributed or sold in any manner.

- **Sell a ticket you can't use.**
- **Transfer a ticket to a colleague or friend.**
- **Buy your way onto a sold out flight.**

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About our Company

FairAir.com was founded by Frank Levy and Jim Lawrence in September 1999 with headquarters in San Francisco, CA. The company has raised \$3.3 million dollars from [The Megunticook Fund](#) and angel investors, including several executives with airline industry experience. Other investors include management level individuals from Amazon.com, Hotmail, Inktomi and Dell.

We are actively continuing to hire our management and development teams. Please visit our [jobs area](#) for more information.

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PTO/SB/69 (12-97)

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Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

Complete if Known

Application Number	09/539,132
Filing Date	March 30, 2000
First Named Inventor	McDonough
Group Art Unit	Unknown
Examiner Name	UNKNOWN
Attorney Docket Number	CMCDO.00001

☐ PETITIONS DECIDED BY PETITIONS OFFICE

- | | |
|--|---|
| 301 Relating to Public Use Proceedings (37 CFR 1.292) | 503 To waive/suspend rules (37 CFR 1.183) |
| 302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02) | 504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181) |
| 303 To make special - infringement (37 CFR 1.102, MPEP 108.02) | 505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4)) |
| 304 Relating to the Filing/Issuance of Divisional Reissue (37 CFR 1.177) | 506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application |
| 305 To waive or suspend rules (37 CFR 1.183) | 507 To enter priority papers after Issue Fee payment (37 CFR 1.55(a)) |
| 306 To expunge a paper from patent application or patent file (37 CFR 1.59) | 508 To defer issuance of patent (37 CFR 1.314) |
| 307 Withdrawal of Attorney (37 CFR 1.36) | 515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181) |
| 308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103.104) | 516 To waive/suspend rules re patent mailers in Office of Admin. (37 CFR 1.183) |
| 309 Relating to Small Entity (37 CFR 1.28) | 519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182 |
| 310 Relating to reexamination (37 CFR 1.181-1.183) | 521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377) |
| 311 For correction of inventorship for applications - no filing date (37 CFR 1.48) | 523 To issue patent in the name of the Assignee (37 CFR 1.334(c)) |
| 312 For correction of inventorship re PCT applications (37 CFR 1.48) | 525 To withdraw a holding of abandonment (37 CFR 1.181) |
| 313 For filing application without one or more inventors (37 CFR 1.47) | 526 To order a Commissioner-initiated Reexamination proceeding (37 CFR 1.520) |
| 314 For filing PCT application without one or more inventors (37 CFR 1.47) | 527 To convert Provisional Application |
| 315 For extension of time without fee in cases in Application Division (37 CFR 1.136(b)) | 528 To reinstate abandoned Provisional Application |
| 399 For matters before A/C for Patents - not specified | 530 PCT petition-unavoidable |
| 408 Relating to a filing date under 35 USC 111 & 37 CFR 1.53 | 531 PCT petition-unintentional |
| 411 Filing date for application filed by Express Mail (37 CFR 1.10) | 532 To accept unavoidably delayed payment of maintenance fee (37 CFR 1.378 (b)) |
| 412 Filing date for lost application | 533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c)) |
| 501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a)) | 534 Petitions related to reexamination proceedings |
| 502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b)) | 599 For matters before the Deputy A/C for Patents - not specified |

☒ PETITIONS DECIDED BY THE GROUP DIRECTOR

- | | |
|--|--|
| 601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02) | 618 For concurrent Ex parte and Inter parte proceedings (37 CFR 1.212) |
| 602 To make special - continuity of earlier application (37 CFR 1.102, MPEP 708.02) | 619 For return of original oath of patent application (MPEP 604.04(a)) |
| 603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02) | 620 For extension of time (37 CFR 1.136(b)) |
| 604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02) | 621 For interview after Notice of Allowance mailed (MPEP 713.10) |
| 605 To make special - Energy Program (37 CFR 1.102, MPEP 708.02) | 622 Concerning appeal application before transfer of jurisdiction to Board (MPEP 1206) |
| 606 To make special - Recombinant DNA (37 CFR 1.102, MPEP 708.02) | 623 For second or subsequent suspension of action (37 CFR 1.103, MPEP 709) |
| 607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02) | 625 To reinstate Appeals dismissed in Group |
| 608 To reopen prosecution after Board decision (37 CFR 1.198) | 626 From denial of reexamination request (37 CFR 515(c)) |
| 609 For review of final restriction requirement (37 CFR 1.144) | 627 To enter an amendment after payment of Issue Fee (37 CFR 1.312(b)) |
| 610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes | 628 From refusal to issue a Certificate of Correction (37 CFR 1.181, MPEP 1480-1485) |
| 611 Relating to the prematurity of final rejection (37 CFR 1.181, MPEP 706.07(c)) | 629 For withdrawal of attorney from application pending in group (37 CFR 1.36) |
| 612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19) | 630 For extension of time in a reexamination (37 CFR 1.550(c)) |
| 613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03) | 631 To merge multiple reexamination proceedings (37 CFR 1.565(c), MPEP 2283) |
| 614 Relating to a requirement to cancel new matter from application (37 CFR 1.181, MPEP 608.04(c)) | 632 To effect a second conversion of inventorship (37 CFR 1.48, MPEP 201.03) |
| 615 Relating to formal sufficiency/propriety of affidavits (37 CFR 1.131, 1.132, 1.608, MPEP 715.07) | 633 Superconductivity |
| 616 To institute an interference (37 CFR 1.606) | 634 To correct inventorship in a patent not in interference (37 CFR 1.324, MPEP 1481) |
| 617 Relating to refusal to enter an amendment under 37 CFR 1.312 | 635 To change inventorship in an application (37 CFR 1.48) |
| | 636 To change inventorship in a patent (37 CFR 1.48) |
| | 637 To withdraw from issue before payment of an issue fee (37 CFR 1.313(a)) |
| | 699 For matters before Group Director - not specified |

☐ PETITIONS DECIDED BY BOARD OF PATENT APPEALS AND INTERFERENCES

- | | |
|---|--|
| 701 To exercise supervisory authority re action by examiner/examiner-in-chief (37 CFR 1.644) | 711 To assign particular members to hearing or to request augmented panel (35 USC 7) |
| 702 To accept belatedly filed copies of interference settlement agreements (35 USC 135(c), 37 CFR 1.666(c)) | 712 To decide miscellaneous questions in proceedings under 37 CFR 1.601-1.688 |
| 703 For withdrawal of attorney in proceeding under 37 CFR 1.201 - 1.288 (37 CFR 1.36) | 713 To accept priority papers in applications in interference (37 CFR 1.644) |
| 704 For access to a settlement agreement under 35 USC 135(c) (37 CFR 1.666(b)) | 714 To reinstate an Appeal |
| 705 For access to an application in proceedings before the Board (37 CFR 1.14(e)) | 799 For matters before Chairman of Board - not specified |
| 706 From a refusal to issue a Certificate of Correction (37 CFR 1.322, 1.323) | 801 To make an application before the Board special (37 CFR 1.102) |
| 707 To correct errors in inventorship (37 CFR 1.324) | 802 To reinstate an Appeal |
| 708 For extension of time to file amendment under 37 CFR 1.196(b) (37 CFR 1.136) | 803 To extend time/suspend proceedings (37 CFR 1.196, 1.197, 1.304) |
| 709 To make an application before the Board special (37 CFR 1.102) | 804 For extension of time to file supplemental Reply Brief (37 CFR 1.136) |
| 710 For extension of time to file supplemental Reply Brief (37 CFR 1.136) | 805 To accept late request for an Oral Hearing (37 CFR 1.136) |
| | 899 For matters before the Clerk of the Board - not specified |

☐ PETITIONS DECIDED BY SPECIAL LAWS (SECURITY AND GOVERNMENT INTEREST MATTERS)

- | | |
|-----------------------|--|
| 901 Under 42 USC 2182 | 904 Under 35 USC 267 |
| 902 Under 42 USC 2457 | 905 To consider/review security or Government interest matters - not specified |
| 903 Under 35 USC 184 | |

☐ PETITIONS DECIDED BY THE SOLICITOR

- | | |
|---|---|
| 951 Petitions for extension of time in court matters 35 USC 142, 145, 146 | 953 Requests filed under the Freedom of Information Act |
| 952 Petitions relating to ex parte questions in cases before the Court of Appeals for the Federal Circuit | 959 Not specified |

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